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No. ~~00-1054~~

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

CASH AMERICA INTERNATIONAL, INC. AND
CASH AMERICA, INC. OF ALABAMA,
Petitioners,

v.

KEVIN SPARKS,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

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PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Petitioners Cash America International, Inc. and Cash America, Inc. of Alabama (collectively, "Cash America") reply briefly herein to respondent Kevin Sparks's ("Sparks") brief in opposition to Cash America's petition for a writ of certiorari. Sparks has offered no persuasive argument against issuance of the writ; indeed, following the release of this Court's decision in *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, ___U.S.___, 121 S. Ct. 1678 (2001), which mandates independent *de novo* appellate review of punitive awards for excessiveness, Cash America's case for the writ is even more compelling.

Sparks's principal argument in opposition to Cash America's petition appears to be that Cash America did not properly preserve the federal constitutional issue now before this Court. Specifically, Sparks claims:

> In its original appeal brief to the Alabama Supreme Court, [Cash America] did not raise any constitutional question and did not allege that its right to due process was denied by the trial court . . .

(Sparks's opposition brief at 7). This is not accurate. The appendix to this reply brief sets out that portion of Cash America's initial appeal brief to the Alabama Supreme Court, specifically arguing in detail that the punitive verdict in this case was constitutionally excessive and should be substantially remitted under the guidelines announced in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). Accordingly, it is clear that Cash America did properly preserve the constitutional issue currently before this Court. This Court should reach the merits of Cash America's petition.[1]

Sparks's next argument, that at the time this case was before the Alabama Supreme Court, Alabama had a statute requiring *de novo* appellate review of punitive awards, (*Ala. Code* § 6-11-24(b) (1975)) is simply wrong. (Sparks's opposition brief at 9-10). This statute was enacted by the Alabama Legislature in 1987 as part of a package of tort reform legislation; however, the above provision requiring appellate courts to independently reassess punitive damages verdicts was declared unconstitutional by the Alabama Supreme Court in *Armstrong v. Roger's Outdoor Sports, Inc.*, 581 So. 2d 414, 421 (Ala. 1991). (*See* Cash America's petition at 9-10, n. 4). And in any event, the Alabama

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[1] Sparks also argues that Cash America did not reference any federal constitutional provisions in its application for a rehearing to the Alabama Supreme Court, even though that application did state, "Cash America respectfully asserts that there is . . . insufficient evidence in the record to support [Sparks's] . . . punitive verdict as remitted." (*See* Sparks's opposition brief at app. 3). Cash America addressed several other issues in its application, as did the successful petitioners in *Cooper Industries, supra*, U.S. S. Ct. Petition No. 99-2035.

Supreme Court in the present case undertook no review whatsoever of Sparks's punitive award. Sparks stresses that the trial court did undertake an extensive review of his award, but that fact is irrelevant for the present purposes.

The Alabama Supreme Court has now acknowledged that it must apply an independent, *de novo* standard in reviewing punitive awards. *Acceptance Ins. Co. v. Brown*, 2001 WL 729238, Nos. 1991938, 1992026 (Ala. June 29, 2001). In *Brown*, the Alabama Supreme Court stated:

> Recently, in *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, ___U.S.___, 121 S. Ct. 1678 (2001), the United States Supreme Court addressed the question whether an appellate court should review a trial court's punitive damages award according to an abuse of discretion standard or according to a *de novo* standard . . . [T]he Court held "that courts of appeals should apply a *de novo* standard of review when passing on [a trial court's] determination of the constitutionality of punitive damages awards." Accordingly, in light of the United States Supreme Court's recent pronouncement, we review the trial court's punitive damages award in this case *de novo*."

Id. at *24.

In considering Cash America's constitutional challenge to the excessiveness of the punitive damage fine imposed against it, the Alabama Supreme Court simply adopted the trial court's conclusions without undertaking its own review or analysis. (*See* Cash America's appendix to its petition for a writ of certiorari, app. 22a-23a). Without question, the law now requires appellate courts to undertake an independent *de novo* review of punitive awards for excessiveness, as the Alabama Supreme Court has acknowledged. Thus, Sparks's arguments about the thoroughness of the trial court's analysis are beside the point.

Cash America was entitled to appellate review of the punitive award in this case for constitutional excessiveness. The writ should issue.

Respectfully submitted,

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